

**BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

WESLEYAN CHURCH,	)	
	)	
Appellant,	)	Case No 07E-006
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE WEBSTER
WEBSTER COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by Wesleyan Church ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 508 2nd Avenue, Kearney, NE, Nebraska, on August 15, 2007, pursuant to an Order for Hearing and Notice of Hearing issued May 22, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Warnes presided at the hearing.

James A. Wagner, Pastor of the Taxpayer was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Jerry McDole, County Attorney for Webster County, Nebraska, appeared as legal counsel for the Webster County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**I.  
ISSUES**

The Taxpayer has asserted that the subject property should be exempt from taxation.

The issues on appeal related to that assertion are:

Whether the decision of the County Board denying an application for exemption of the subject property from taxation was unreasonable or arbitrary; and

Whether the subject property was exempt from taxation.

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains is described as LOTS 17-18 & N 10' OF 19 BLOCK 22 SMITH & MOORE'S (PARSONAGE) in Webster County, Nebraska, ("the subject property").
3. An application for exemption of the subject property from taxation was filed by the Taxpayer.
4. The Assessor recommended disapproval.
5. The Assessor's recommendation was affirmed by the County Board
6. The Property Tax Administrator was served with a Notices in Lieu of Summons and did not exercise the statutory right to intervene.

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).
2. “Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary: (1) The property of the state and its governmental subdivisions shall constitute a separate class of property and shall be exempt from taxation to the extent such property is used by the state or governmental subdivision for public purposes authorized to the state or governmental subdivision by this Constitution or the Legislature. To the extent such property is not used for the authorized public purposes, the Legislature may classify such property, exempt such classes, and impose or authorize some or all of such property to be subject to property taxes or payments in lieu of property taxes except as provided by law; (2) the Legislature by general law may classify and exempt from taxation property owned by and used exclusively for agricultural and horticultural societies and property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user....” *Neb. Const*, Art VIII § 1
3. Section 1 of Art VIII of Nebraska's Constitution, providing for tax exemption of certain property, is not self-executing, but requires action by the Legislature to carry such

constitutional provision into effect. *Indian Hills Comm. Ch. v. County Bd. of Equal.*, 226 Neb. 510, 412 N.W.2d 459 (1987).

4. “(1) The following property shall be exempt from property taxes:...(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (I) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons....” Neb. Rev. Stat. §77-202 (Cum. Supp 2006).
5. In reference to subsection (1)(d) of Nebraska Statutes section 77-202, exclusive use means the primary or dominant use of property, as opposed to incidental use. *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993)

6. Subsection (1)(d) of Nebraska Statutes section 77-202 contains a two-tier approach to property tax exemption: the first tier involves the nature, character, or status of a property owner, and the second tier concerns the use of the property. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).
7. To be tax exempt, property must (1) be owned by an organization designated in subsection (1)(d) of Nebraska Statutes section 77-202; (2) be used exclusively for at least one of the purposes specified in subsection (1) (d) of Nebraska Statutes section 77-202; and (3) not be (a) owned or used for financial gain to the property owner or user, (b) used more than 20 hours per week for sale of alcoholic liquors, or (c) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991)
8. Statutes exempting property from taxation are to be strictly construed, property must come clearly within the statutory provisions granting such exemption, and the burden of proving the right to the exemption is upon the claimant. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).
9. A liberal and not a harsh or strained construction is to be given to the terms ‘educational,’ ‘religious,’ and ‘charitable’ in order that the true intent of the constitutional and statutory provisions may be realized. The interpretation should always be reasonable. *Young Men's Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921).

10. The burden of proof is upon one claiming property to be exempt from taxation to establish that its predominant use is for one of the purposes set out in this section. *OEA Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 185 N.W.2d 464 (1971)  
*Berean Fundamental Church Council, Inc. v. Board of Equalization*, 186 Neb. 431, 183 N.W.2d 750 (1971).
11. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
12. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
13. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)
14. The Commission can grant relief only if there is clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See, Neb. Rev. Stat. §77-

- 5016 (8) (Cum. Supp. 2006), and e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
15. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
  16. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
  17. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
  18. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).
  19. "Religious organization means an organization whose purpose is the dedication to or profession of a sectarian creed and belief in a Devine or superhuman power or powers to be obeyed or worshiped, or the furtherance and enrichment of spiritual faith involving a code of ethics and a spiritual philosophy." 350 Neb. Admin. Code, Ch. 40, §005.01B(07/02).
  20. Properly adopted rules and regulations have the force and effect of law. *Alexander v. J.D. Warehouse*, 253 Neb. 153, 568 N.W. 2d 892 (1997).

21. An exemption will not be lost if the property claimed to be exempt is used in an incidental manner that is not religious as long as the predominant or primary use of the property is one or more of the exempt uses. *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. Of Equal.*, 243 Neb. 412, 499 N.W. 2d 543, (1993).
22. The tax exemption for religious purposes is not restricted to property used exclusively for public worship; rather, the exemption embraces all property primarily used for religious purposes. *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. Of Equal.*, 243 Neb. 412, 499 N.W. 2d 543, (1993).

#### **IV. ANALYSIS**

The issue presented by the Taxpayer in this appeal is whether real property owned by the Wesleyan Methodist Church (Taxpayer) of Red Cloud, NE is exempt from valuation in accordance with section 77-202 (1) (d) of the Nebraska Revised Statutes for the tax year 2007. The allegation by the Taxpayer is that the subject property is exempt due to its use for religious purposes.

The parcel subject of this appeal includes a land component of a lot 60' x 142' and an improvement consisting of a 2,231 square foot house with a 425 square foot basement. The subject property is generically referred to as the "parsonage" due to its past service as the pastor's residence.

The evidence was that the subject property was not used as a residence by the pastor for the prior or the year for which the exemption was sought. The subject property had instead

been rented out by the Taxpayer. The monies received from the rental of the subject property was directed to pay a housing allowance to the pastor. Exhibit 7:2 is an itemized report of the rent received for the subject property and the first entry is for monies received for September, 2006. The report shows rent received for each month thereafter through June, 2007. This report also shows the disbursement of monies for a "housing allowance" to the pastor which monthly disbursement exceeds the amount of rent received.

The Taxpayer's main contention is that the subject property should be exempt since the monies received from its rental are all used to pay in part the pastor's housing allowance (\$619/month) which allowance exceeds the rent received. The Taxpayer's pastor testified that there was no "profit" to the Taxpayer from this rental arrangement.

Section 77-202 (1) (d) of the Nebraska Revised Statutes implements the constitutional allowance that certain properties are exempt from taxation. Article VIII, section 2, (2) of the Nebraska Constitution exempts certain properties from valuation for taxation if used for religious purposes. Section 77-202 (1) (d) of the Nebraska Revised Statutes specifically recites that the property must be used exclusively for religious purposes. This same statute also mandates that property not be owned or used for financial gain or profit to either the owner or user.

The testimony of the Taxpayer's pastor revealed that he had chosen to seek alternative housing rather than continue living in the subject property. After the pastor moved to other housing, the Taxpayer chose to rent out the subject property and use the monies received from rents to assist in the payment of monies for the housing allowance of the pastor. The persons who rented the subject property were members of the Taxpayer's Church and voluntarily

assisted in the maintenance, upkeep and administrative work of the Church. The testimony of the pastor was that the tenants of the subject property contributed their beneficial assistance to the Church on a voluntary basis without compensation. The tenants were not employees of the Church.

The Nebraska Supreme Court has stated the term “exclusive use” means the primary or dominant use of property, as opposed to incidental use. *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. Of Equal.*, 243 Neb. 412, 416, 499 N.W.2d. 543, 547 (1993). A parsonage owned by a church, which parsonage houses a pastor who is engaged in full-time ministerial work, which parsonage is provided to him for the convenience of the church and parishioners, and which parsonage serves numerous religious purposes, is property used exclusively for religious purposes and (is) exempt from taxation. *Id.* At 419, 499 N.W. 2d at 548.

“[The Nebraska Supreme Court] has held that it is the exclusive use of property which determines its exempt character. It is the use of property as distinguished from the use of the income from the property that determines whether or not it is exempt from taxation. *Doane College v County of Saline*, 173 Neb.8, 112 N.W.2d 248; *Lincoln Woman’s Club v. City of Lincoln*, 178 Neb. 357, 133 N.W.2d 455, *Nebraska Conf. Assn. Of Seventh Day Adventists v. County of Hall*, [166 Neb. 588, 90 N.W.2d 50]” *Nebraska Conf. Assn. Of Seventh Day Adventists v. County of Hall*, 179 Neb. 326, 138 N.W.2d 455(1965).

The Commission finds that the exclusive use made of the subject property is not for religious purposes. The Commission further finds that the use made of the subject property is for financial gain of the owner, Taxpayer. The Commission denies the appeal of the Taxpayer.

**V.  
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decision of the County Board determining that the subject property is taxable as of the assessment date January 1, 2007, is affirmed.
2. This decision, if no appeal is timely filed, shall be certified to the Webster County Treasurer, and the Webster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
3. Any request for relief, by any party, which is not specifically provided for by this order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This decision shall only be applicable to tax year 2007.

6. This order is effective for purposes of appeal on August 31, 2007.

**Signed and Sealed.** August 31, 2007.

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Wm. R. Wickersham, Commissioner

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Nancy J. Salmon, Commissioner

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William C. Warnes, Commissioner

**SEAL**

**ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**